

9

REMARKS

Applicant has carefully reviewed the Office Action dated March 28, 2005. Claims 1-30 are pending in this application. Applicant has amended Claims 1, 11 and 21 to more clearly point out the present inventive concept. Reconsideration and favorable action is respectfully requested.

Claims 1, 11 and 21 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed with respect to the amended claims.

Claims 1 and 11 have been noted as utilizing the term "connection" which is considered by the Examiner to be somewhat confusing. Applicant has amended the claims to further clarify that this connection is to the credit card company. One can make multiple connections on a computer, such that connections to the credit card company, the vendor and other locations can be maintained in an open state. Thus, TCP/IP packets can be sent out to any of these locations with the appropriate information merely by associating with that particular packet the destination address and other overhead information. Therefore, even though a connection is provided to provide automatic connection of the user location to the vendor web site, there is also a connection made to a credit card server. Applicant believes that the amendments have clarified this problem and, therefore, respectfully requests the withdrawal of the 35 U.S.C. §112 rejection with respect to Claims 1 and 11. Claim 21 has been amended to clarify the language noted to be confusing by the Examiner. Applicant therefore requests the withdrawal of the 35 U.S.C. §112 rejection with respect to Claim 21.

Claims 1-5, 7-15, and 17-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Rhoads*. This rejection is respectfully traversed with respect to the amended claims.

The Examiner has noted that one deficiency in *Rhoads* is that there is no specific mention that the MRC would be utilized to direct the user to a credit card company. The Examiner is utilizing the *Kramer* reference for the teaching that credit card data can be obtained from the client machine. As noted in the previous response, the purpose of *Kramer et al.* is to create credit card records and to

AMENDMENT AND RESPONSE

S/N 09/659,170

Atty. Dkt. No. PHL-25,340

"illuminate" various records with information such as logos and hyperlinks in a manner to associate them with the the associated vendor for a transaction that the user had made. It is then up to the user to select the information for use thereof by the user. There is no use of an MRC for the purpose of directing the user to a particular credit card company in conjunction with the transaction. The Examiner considers that it would have been obvious to a person having ordinary skill in the art at the time of the invention to include the step of accessing a credit card company directly to obtain the credit card information, because this would "provide direct access and save the user time by stream lining the system." Applicant believes that it certainly would save time and provide a more robust system. However, just because incorporation of such a feature would save the user time by streamlining the system does not provide any suggestion that one skilled in the art would combine these two references and associate the credit card location with the MRC for that purpose. There is no discussion in *Kramer* for in any way utilizing machine readable codes, scanning, or the such for solving such a problem, nor is there any statement of such a problem being of concern in *Kramer*. Moreover, Applicant believes that, with respect to scanning and facilitating connection to the credit card service, *Kramer* is not analogous art. There is nothing in *Kramer* that provides any motivation for such a combination. Applicant believes that there is no suggestion or motivation for one skilled in the art to combine the teachings of *Kramer*, which are not directed to the use of any type of MRC code or redirection of a user to any location, with the teachings of *Rhoads*. The courts have held that it is impermissible to reconstruct a claimed invention from select pieces of prior art absent some suggestion, teaching or motivation in the prior art to do so. *Interconnect Planing Corp. v. Feil*, 774 F.2d 1132, 1143, 227 USPQ (BNA) 543, 551 (Fed. Cir. 1985). There must be some suggestion in the art to one of ordinary skill in the art as to the desirability of combining these two references. See *C.R. Bard, Inc. v. M3 Sys, Inc.*, 157 F.3d 1340 (1998), 48 USPQ 2d (BNA) 1225 (1998). As such, Applicant believes that the combination of these two references is not warranted by anything in the Specification. The Examiner's statement that this would "provide direct access and save the user time by streamlining the system" is believed to be insufficient motivation. Applicant believes there has to be more shown. Neither *Rhoads* nor *Kramer* are concerned about saving the user time by providing some type of unique code that will access the credit card company directly as a result of the scanning operation.

AMENDMENT AND RESPONSE

S/N 09/659,170

Atty. Dkt. No. PELY-25,340

The Examiner has noted in the response to the arguments that *Rhoads* illustrates at Col. 27, lines 40-50 that a credit card number is being accessed using the "BEDOOP card." Accessing this card and sending the information to the vendor to process the transaction is believed to be the suggestion that the Examiner uses to justify this combination. The specification at Col. 27, beginning at line 44 basically states that:

.....the transaction can be speeded simply by presenting a BEDOOP-encoded credit card to a BEDOOP sensor on the user's computer. The BEDOOP data on the credit card leads to a database entry containing a credit card number and expiration date. The BEDOOP application then sends this information (optionally after encrypting same) to the web site with instructions to purchase a particular product.

First, this is nothing but a card reader that is responsive to a credit card being swiped. Once the credit card is swiped and recognized as being a credit card associated with that machine, then the connection is made to a credit card server, but this connection is believed to be made (since there is no suggestion otherwise) based upon the fact that this is a dedicated "BEDOOP sensor" which would always be connected to a particular server and only that server. There is no requirement for any type of code to direct the transaction to a particular credit card server. In fact, this would not be desirable since this is a self-contained system and it would be desirable to have all transactions go to a single server. *Rhoads* in fact teaches away from utilizing an MRC to provide information to a particular server, since this is a self-contained system. Therefore, in view of the above, Applicant respectfully requests the withdrawal of the 35 U.S.C. §103 rejection with respect to Claims 1-5, 7-15 and 17-30.

Claims 6, and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Rhoads* and *Kramer* and further in view of *Official Notice*.

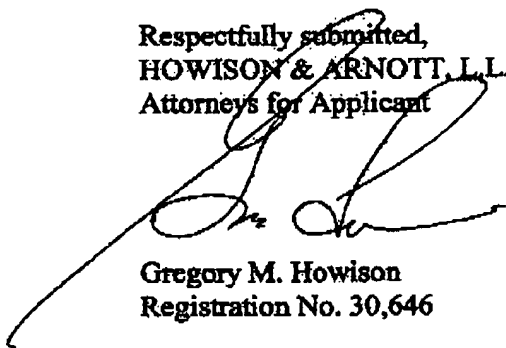
The Examiner has noted with *Official Notice* that a wireless scanner and a scanner are the same thing. Applicant believes that official notice of any sort does not cure the deficiencies noted herein above with respect to the combination of *Rhoads* and *Kramer* and, therefore, respectfully requests the withdrawal of the 35 U.S.C. §103(a) rejection with respect to Claims 6 and 16.

AMENDMENT AND RESPONSE
S/N 09/659,170
Atty. Dkt. No. PHL-25,340

12

Applicant has now made an earnest attempt in order to place this case in condition for allowance. For the reasons stated above, Applicant respectfully requests full allowance of the claims as amended. Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/PHLY-25,340 of HOWISON & ARNOTT, L.L.P.

Respectfully submitted,
HOWISON & ARNOTT, L.L.P.
Attorneys for Applicant



Gregory M. Howison
Registration No. 30,646

GMH/yoc/keb

P.O. Box 741715
Dallas, Texas 75374-1715
Tel: 972-479-0462
Fax: 972-479-0464
May 18, 2005

AMENDMENT AND RESPONSE
S/N 09/659,170
Any. Dkt. No. PHLY-25,340